

No. 13017

United States
Court of Appeals
For the Ninth Circuit.

COMET THEATRE ENTERPRISES, INC.,
Appellant,

vs.

LEON CARTWRIGHT, WILLIAM E. WILSON,
Cartwright & Wilson Construction Co., a Co-
partnership and Cartwright & Wilson Construc-
tion Co., a Corporation,
Appellees.

Transcript of Record

Appeal from the United States District Court,
Southern District of California,
Central Division.

FILED

SEP 6 1951

PAUL P. O'BRIEN

Phillips & Van Orden Co., 870 Brannan Street, San Francisco, Calif.

CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

For Appellant:

MAURICE J. HINDIN,
111 West Seventh St.,
Los Angeles 14, Calif.

For Appellees:

TRIPP & CALLAWAY,
210 West Seventh St.,
Los Angeles 14, Calif.

In the District Court of the United States, Southern
District of California, Central Division

No. 12351—WM

COMET THEATRE ENTERPRISES, INC., a
Corporation,

Plaintiff,

vs.

LEON CARTWRIGHT, WILLIAM E. WILSON,
CARTWRIGHT & WILSON CONSTRUCTION CO., a Co-partnership; CARTWRIGHT
& WILSON CONSTRUCTION CO., a Corporation,

Defendants.

COMPLAINT

(Money Had and Received)

Comes Now the plaintiff and for cause of action
against the defendants, and each of them, alleges:

I.

That plaintiff is a corporation organized and
existing under and by virtue of the laws of the
State of California and has and maintains its principal
place of business within the County of Los
Angeles, State of California.

II.

The defendants, and each of them, are citizens of
the State of Utah.

III.

That this is a controversy of a civil nature between citizens of different states, and that the matter involved herein exceeds, exclusive of interest and costs, the sum of Three Thousand Dollars (\$3,000.00).

IV.

That on or about the 25th day of January, 1950, the defendants, and each of them, became indebted to the plaintiff in the sum of Three Thousand Five Hundred Dollars (\$3,500.00), for and on account of money had and received by the defendants, and each of them, to the use and benefit of the plaintiff herein.

That, although demand has been made upon the defendants, and each of them, therefor, no part of the said sum has been paid, and that there is now due, owing and unpaid from the defendants, and each of them, to the plaintiff the sum of Three Thousand Five Hundred Dollars (\$3,500.00).

Wherefore, plaintiff prays for judgment against the defendants, and each of them, in the sum of Three Thousand Five Hundred Dollars (\$3,500.00), for costs of suit, for interest from the date of filing of this complaint, and for such other and further relief as to the Court may seem meet and just in the premises.

/s/ MAURICE J. HINDIN,
Attorney for Plaintiff.

Duly verified.

[Endorsed]: Filed September 28, 1950.

[Title of District Court and Cause.]

ANSWER

Come Now the defendants Leon Cartwright and Cartwright & Wilson Construction Co., a co-partnership, and for answer to the complaint on file herein admit, deny and allege:

I.

Defendants have no information or belief upon which to answer the allegations contained in paragraph I and upon that ground deny generally and specifically each, every and all of the allegations contained therein.

II.

Generally and specifically deny each, every and all of the allegations contained in paragraph IV and specifically deny that there is due and owing from defendants to plaintiff the sum of \$3,500.00, or any other sum whatsoever, whether for the reasons alleged in said paragraph, or otherwise, or at all.

Wherefore, defendants pray that plaintiff take nothing by reason of its complaint on file herein; that defendants be awarded their costs of suit incurred herein; and for such other and further relief as to the court may seem proper in the premises.

TRIPP & CALLAWAY,

By /s/ HULEN CALLAWAY,

Attorneys for Defendants.

Duly verified.

[Endorsed]: Filed November 20, 1950.

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This is an action on a common count for money had and received.

Defendants are a co-partnership engaged in the general contracting business in Salt Lake City, Utah. They were unlicensed to do a building contracting business in the State of California. Defendants were employed by plaintiff in connection with the construction of a drive-in theatre in Pasadena, California, in connection with which said construction defendants supervised certain of the work, consulted with and furnished certain plans and specifications to plaintiff's architect and arranged for two or more experienced sub-contractors to come to Pasadena from Utah to do various parts of the work.

The sum of \$3,500.00 was paid defendant by plaintiff on January 25, 1950, which they seek to recover in this action by virtue of the fact that defendants were not licensed as building contractors in the State of California. The evidence yields the following:

Findings of Fact

1. The plaintiff was at all times material to the issues herein a corporation organized under the laws of the State of California. The defendants were at all times material to the issues herein citizens and residents of the State of Utah.

2. The plaintiff was making a claim for an amount exceeding \$3,000.00 exclusive of interest and

costs against the defendants which said claim grows out of payment to defendants of the sum of \$3,500.00 on January 25, 1950, in connection with certain services rendered plaintiff in connection with construction of a drive-in theatre in Pasadena, California.

3. The defendants were unlicensed as building contractors by the State of California at all times material to the issues herein involved.

4. The Court finds that the contract between plaintiff and defendant was illegal but that the payment of \$3,500.00 to defendants was voluntarily made for services actually rendered.

Conclusions of Law

The Court concludes that the plaintiff is not entitled to recover for the payment of \$3,500.00 to defendants in that, even though the contract between plaintiff and defendant was illegal by reasons of the fact that the defendants were not licensed as building contractors in the State of California at the time material to the issues herein, said payment was voluntarily made for services actually rendered by defendants to plaintiff.

Dated: This 31st day of May, 1951.

/s/ WM. C. MATHES,

United States District Judge.

Affidavit of Service by Mail attached.

Lodged May 31, 1951.

[Endorsed]: Filed May 31, 1951.

In the District Court of the United States in and
for the Southern District of California, Central
Division

No. 12351—WM

COMET THEATRE ENTERPRISES, INC., a
Corporation,

Plaintiff,

vs.

LEON CARTWRIGHT, et al.,

Defendants.

JUDGMENT

This cause having been heard on the pleadings and proof and having been argued and submitted by counsel of the respective parties and the Findings of Fact and Conclusions of Law having been heretofore filed and signed and defendants' cost having been duly taxed at the sum of \$48.85 on motion of Hulen C. Callaway, Esq., counsel for defendant,

It Is Hereby Ordered, Adjudged and Decreed that the plaintiff take nothing by reason of said action as against defendants.

May 31, 1951.

/s/ WM. C. MATHES,

United States District Judge.

Approved as to Form:

/s/ MAURICE J. HINDIN,

Attorney for Plaintiff.

Lodged May 31, 1951.

[Endorsed]: Filed May 31, 1951.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Comes now the plaintiff and appeals to the United States Court of Appeals for the Ninth Circuit from the judgment heretofore made and entered in the above-captioned action on or about the 1st day of June, 1951, and from the whole thereof and from the Order of the Court made on or about the 14th day of June, 1951, denying plaintiff's motion for a new trial and from the whole thereof.

Dated: June 21st, 1951.

/s/ MAURICE J. HINDIN,
Attorney for Plaintiff and
Appellant.

Affidavit of Service by Mail attached.

[Endorsed]: Filed June 21, 1951.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the United States District Court for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 20, inclusive, contain the original Complaint; Answer; Findings of Fact and Conclusions of Law; Judgment; Motion for New Trial; Order Denying Motion for New Trial; Notice of

Appeal and Designation of Record on Appeal which constitute the record on appeal to the United States Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing and certifying the foregoing record amount to \$2.00 which sum has been paid to me by appellant.

Witness my hand and the seal of said District Court this 18th day of July, A. D. 1951.

[Seal]

EDMUND L. SMITH,
Clerk.

By /s/ THEODORE HOCKE,
Chief Deputy.

[Endorsed]: No. 13017. United States Court of Appeals for the Ninth Circuit. Comet Theatre Enterprises, Inc., Appellant, vs. Leon Cartwright, William E. Wilson, Cartwright & Wilson Construction Co., a Co-partnership and Cartwright & Wilson Construction Co., a Corporation, Appellees. Transcript of Record. Appeal from the United States District Court for the Southern District of California, Central Division.

Filed July 19, 1951.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the
Ninth Circuit.

United States Court of Appeals
for the Ninth Circuit

No. 13017

COMET THEATRE ENTERPRISES, INC., a
Corporation,

Plaintiff and Appellant,

vs.

LEON CARTWRIGHT, et al.,

Defendant and Respondent.

CONCISE STATEMENT OF POINTS RELIED
ON BY APPELLANT AND DESIGNATION
OF RECORD

A concise statement of the points relied on by appellant pursuant to Rule 19 is as follows:

1. A contract for building contracting services which requires a license by the person performing the services is absolutely void if performed by a unlicensed person.

2. Persons purporting to render contracting services may not recover for their services nor may they retain money paid to them on account of such services unless they hold a valid contractor's license issued under California Business and Professions Code Sections 7025 to 7031, inclusive, and 7052 to 7057, inclusive.

3. The California Contractors License Law is a statute enacted for the protection of the public, and

persons paying money to such unlicensed contractor are not in *peri delicto* with such unlicensed contractor and may recover payment therefor.

Designation of Record Which Is Material
to Consideration of Appeal

The following portions of the record are material in consideration of the appeal:

1. Complaint.
2. Answer.
3. Findings of Fact and Conclusions of Law.
4. Judgment.
5. Notice of Appeal.
6. Clerk's Certificate.

Respectfully submitted,

/s/ MAURICE J. HINDIN,

Attorney for Plaintiff and
Appellant.

Affidavit of Service by Mail attached.

[Endorsed]: Filed July 25, 1951.